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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,971	12/19/2001	Joseph P. Russo	EMC-01-109	4871

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EMC CORPORATION
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EXAMINER

PARDO, THUY N

ART UNIT	PAPER NUMBER
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2165

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/024,971	Applicant(s) RUSSO ET AL.	
	Examiner Thuy Pardo	Art Unit 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on November 04, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-19 and 22-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-19 and 22-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's Amendment filed on November 04, 2004 has been reviewed. Claims 7, 8, 20, 21, and 29 have been canceled, and claims 1, 9, 14, 22, and 27 have been amended.
2. Claims 1-6, 9-19 and 22-28 are presented for examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Art Unit: 2165

3. Claims 1-6, 9-19 and 22-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Otsuka et al. (Hereinafter "Otsuka") US Patent No. 6,697,823.

As to claim 1, Otsuka teaches the invention substantially as claimed, comprising steps of: using a software agent [the application company 5 is an organization capable of providing applications as software to the computer system, col. 5, lines 47-53; 5a of fig. 1] for selectively presenting a user using a computer other than the backup or restore server with a graphical or command line generic user interface [the public terminal 1 includes a LAN interface 29, and is connected to the network 7, col. 15, lines 51-54; fig. 7] for performing a dialogue [through the public media for performing a dialogue with a user, see the fig. 1]; and using information acquired in the dialogue for configuring for or performing a backup or restore operation [fig. 6, 9, 14A-14C, 16-19, col. 4, lines 17-60] on the backup server [col. 2, lines 16-24, 44-47].

As to claim 2, Otsuka teaches the invention substantially as claimed. Otsuka further teaches using data structures created by function calls that are part of an application program interface [6 of fig. 1; col. 7, lines 47-51].

As to claim 3, Otsuka teaches the invention substantially as claimed. Otsuka further teaches that the data structures are shared by more than one application program interface [2-6 of fig. 1; col. 5, lines 22 to col. 6, lines 30].

Art Unit: 2165

As to claim 4, Otsuka teaches the invention substantially as claimed. Otsuka further an application program interface that is directed toward configuring a client application for the backup or restore operation [fig. 8].

As to claim 5, Otsuka teaches the invention substantially as claimed. Otsuka further teaches an application program interface that is directed toward interfacing with a client application for carrying out the backup or restore operation [fig. 8-14].

As to claim 6, Otsuka teaches the invention substantially as claimed. Otsuka further teaches an application program interface that is directed toward browsing a client application for objects to configure for or for carrying out the backup or restore operation [fig. 21-22].

As to claim 7, Otsuka teaches the invention substantially as claimed. Otsuka further teaches that the user interface is GUI [fig. 20a-20b].

As to claim 8, Otsuka teaches the invention substantially as claimed. Otsuka further teaches the user interface is a command line interface (CLI) [fig. 22].

As to claim 14, it is a corresponding apparatus claim of claim 1. Therefore, it is rejected under the same rationale.

As to claims 9-13 and 15-29, all limitations of these claims have been addressed in the analysis above, and these claims are rejected on that basis.

Response to Arguments

4. Applicant argues that Otsuka neither teach a software agent nor a graphical or/command line generic user interface.

Examiner respectfully disagrees. Examiner believes that Otsuka teaches these limitations. Otsuka teaches the application server 5 as an agent to provide application software to the computer system [see 5a of fig. 1 and col. 5, lines 47-53]. The application server 5 may have the satellite communication section 10 so that applications can be provided through the satellite communication, or through LAN interface 29 connected to the network 7 for performing a dialogue with a user [see the fig. 1, col. 15, lines 51-54; fig. 7].

5. Applicant's arguments have been fully considered but they are not persuasive.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

Art Unit: 2165

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy Pardo, whose telephone number is 571-272-4082. The examiner can normally be reached Monday through Thursday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici, can be reached at 571-272-4083.

The fax phone number for the organization where this application or proceeding is assigned are as follows: (703) 872-9306 (Official Communication)

and/or:

571-273-4082 (*Use this Fax#, only after approval by Examiner, for "INFORMAL" or "Draft" communication. Examiner may request that a formal/amendment be faxed directly to then on occasions*).

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

7. Any response to this action should be mailed to:

Art Unit: 2165

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

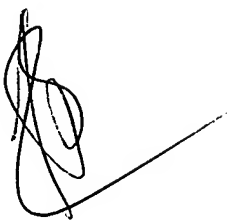
(703) 308-9051, (for formal communications intended for entry)

Or:

(703) 308-5359, (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal
Drive, Arlington. VA., Sixth Floor (Receptionist).

March 18, 2005

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

THUY N. PARDO
PRIMARY EXAMINER